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Donald R. Johnson v. Colin Winchester : Brief of Appellee

Utah Court of Appeals

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Colin R. Winchester; Attorney for Appellee.

Donald R. Johnson; Pro Se.

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**UTAH COURT OF APPEALS
BRIEF**

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DOCKET NO. 970736-CA

IN THE UTAH COURT OF APPEALS

)	
DONALD R. JOHNSON,)	
)	
Petitioner/Appellant,)	
)	
v.)	Case No. 970736-CA
)	
COLIN WINCHESTER, et. al.,)	Priority No. 15
)	
Respondents/Appellees.)	

BRIEF OF RESPONDENTS/APPELLEES

Appeal from the Sixth Judicial District Court in and for Kane
County, Judge K. L. McIff's Order Denying Motion to Vacate, Alter
or Amend, dated December 12, 1997.

COLIN R. WINCHESTER (#4696)
76 North Main Street
Kanab, Utah 84741
Telephone: (435) 644-5278
Facsimile: (453) 644-2281

Attorney for
Respondents/Appellees

DONALD R. JOHNSON
c/o Utah State Prison
P.O. Box 250
Draper, Utah 84020

Petitioner Pro Se

FILED

MAY 12 1998

COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

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Petitioner/Appellant,)	
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76 North Main Street
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Telephone: (435) 644-5278
Facsimile: (453) 644-2281

Attorney for
Respondents/Appellees

DONALD R. JOHNSON
c/o Utah State Prison
P.O. Box 250
Draper, Utah 84020

Petitioner Pro Se

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LIST OF ALL PARTIES

Petitioner/Appellant:
Donald R. Johnson

Respondents/Appellees:	
Colin R. Winchester	Kane County Attorney
Lamont Smith	Kane County Sheriff
Harmon Robertson	Kane County Jail Administrator
Allen Johnson	Kane County Chief Deputy
Don Stockard	Kane County Jailer
Darrin Coleman	Kane County Deputy
John and Jane Does 1-25	Employees or Agents of the Kane County Sheriff's Office, the Utah Department of Corrections, and/or the State of Utah

JURISDICTION OF THE COURT OF APPEALS

Jurisdiction is proper in this Court pursuant to Utah Code Ann. § 78-2a-3(f), which states:

The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

* * *

(f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony.

STATEMENT OF THE ISSUES

1. Did the District Court properly dismiss Johnson's "legal materials" claim as moot?
2. Did the District Court properly dismiss Johnson's other claims?

STANDARD OF REVIEW

On review of a denial of a petition for an extraordinary writ, the standard of review depends upon the issues presented on appeal. If the petition presents only questions of law, the appellate court grants the trial court's conclusions no deference, reviewing them for correctness. If, however, there are questions of fact, the appellate court defers to the trial court's findings and will disturb those findings only if they are clearly erroneous. Moreover, the appellate court views the record in the light most favorable to the findings and judgment,

and if there is a reasonable basis to support the trial court's refusal to grant the requested relief, the appellate court affirms the trial court. Casida v. Deland, 866 P.2d 599 (Utah Ct. App. 1993).

DETERMINATIVE PROVISIONS OF LAW

Utah Rule of Civil Procedure 65B(a) (5):

(5) Dismissal of frivolous claims. On review of the petition, if it is apparent to the court that the legality of the restraint has already been adjudicated in a prior proceeding, or if for any other reason any claim in the petition shall appear frivolous on its face, the court shall forthwith issue an order dismissing the claim, stating that the claim is frivolous on its face and the reasons for this conclusion. The order need not state findings of fact or conclusions of law. The order shall be sent by mail to the petitioner. Proceedings on the claim shall terminate with the entry of the order of dismissal.

STATEMENT OF THE CASE

1. On June 30, 1995, Johnson filed a pro se petition for extraordinary relief, alleging three improper conditions of confinement: first, that he was being involuntarily subjected to "psychological surgery" or "chemical phlebotomy" by Kane County Jail officials who were lacing his food with chemicals; second, that he had been assaulted by inmate Leslie Odom, an allegedly undercover law enforcement officer who had been placed in Johnson's cell by Kane County Jail officials so that the assault could occur; and third, that he was being denied access to his legal materials. R. at 1 - 15.

2. On July 7, 1995, Judge McIff reviewed the petition and requested that the Respondents respond to the legal materials issue, noting that the other issues appeared frivolous. R. at 16.

3. On or about July 21, 1995, and while the petition was pending, Johnson was transferred from the Kane County Jail to the Iron County Correctional Facility. R. at 72.

4. On August 3, 1995, Respondents filed a response to the petition, addressing only the legal materials issue. The response set forth the Kane County Jail's policy of allowing pre-trial inmates access to their legal materials for up to two hours per day, a policy that had been adopted on June 7, 1995, due to a grievance filed by Johnson. R. at 18-23.

5. On August 4, 1995, Judge David L. Mower conducted a hearing on the petition. Johnson noted that he did not have his legal materials at the Iron County Correctional Facility, and the Respondents agreed that his legal materials should be transferred to the Iron County Correctional Facility. Johnson then asked that he be allowed to file an amended petition, and Judge Mower granted that request. R. at 24.

6. On August 14, 1995, Johnson filed the amended petition. The amended petition generally contained the same allegations that were included in the initial petition, though they were set forth with more alleged detail. R. at 55-61.

7. The Respondents did not file a responsive pleading to the amended petition.

8. On February 5, 1996, Judge McIff issued an Order

Denying Petition for Extraordinary Relief. Judge McIff determined that the petition was moot, due to Johnson's transfer to the Iron County Correctional Facility "where he no longer complains of conditions of confinement." Judge McIff also ruled that the "other relief sought in the amended petition is not the proper subject of extraordinary relief under Rule 65B, URCP, and accordingly it is likewise dismissed." R. at 72-73.

9. On February 20, 1996, Johnson filed a Motion to Vacate, Alter, or Amend Final Judgment ("motion to vacate"). R. at 79.

10. On April 23, 1996, Johnson filed a Notice of Appeal, appealing Judge McIff's February 5 Order to this Court. At that time, the motion to vacate had not been ruled on by Judge McIff. R. at 139.

11. On July 11, 1996, this Court issued a Memorandum Decision dismissing the appeal for lack of jurisdiction, the motion to vacate having not yet been ruled on. R. at 140.

12. On January 10, 1997, this Court remanded the case back to the trial court. R. at 141.

13. On December 12, 1997, Judge McIff denied the motion to vacate. R. at 146.

14. On December 20, 1997, Johnson appealed the denial of the motion to vacate. R. at 148.

SUMMARY OF THE ARGUMENT

Johnson's legal materials issue became moot when he was transferred to the Iron County Correctional Facility, and had

unrestricted access to his legal materials there. His other claims were indeed frivolous, and were properly dismissed on that ground. In short, Judge McIff did not err in dismissing Johnson's petition.

ARGUMENT

An issue is considered moot when the requested judicial relief cannot affect the rights of the litigants. State v. Martinez, 925 P.2d 176 (Utah Ct. App); State v. Sims, 881 P.2d 840 (Utah 1994); Duran v. Morris, 635 P.2d 43 (Utah 1981). In this case, Johnson's complaints about alleged lack of access to his legal materials were wholly resolved when he was transferred to the Iron County Correctional Facility on July 21, 1995. That facility, according to Johnson himself, "places no restrictions on the possession of legal materials by pre-trial inmates." R. at 59.

Exceptions to the general mootness rule are occasionally recognized for issues that, although technically moot as to a particular litigant at the time of appeal, are of wide concern, affect the public interest, are likely to recur in a similar manner, or, because of the brief time any one person is affected, would otherwise likely escape judicial review." Wickham v. Fisher, 629 P.2d 896 (Utah 1981); State v. Sims, supra. This case does not fit any of those criteria. Notably, because of Johnson's original grievance, the Kane County Jail adopted a policy allowing pretrial inmates to have their legal materials in their cells for up to two hours per day. Respondents maintain

here, as they did in their original response to Johnson's initial petition, that the policy adopted adequately balances the inmate's right to access to legal materials against the institution's right to guard against fire and contraband storage.

Johnson's other issues are indeed frivolous. Rule 65B(a)(5) allows the court to dismiss a petition if a claim therein appears frivolous on its face. Admittedly, the rule requires the trial court judge to state that the claim is frivolous and the reasons for that conclusion. Although Judge McIff's February 5 Order did not include the word "frivolous", the July 7, 1995 minute entry does. Judge McIff's "reason" is that the other relief is not the proper subject of a Rule 65B petition. No findings of fact or conclusions of law are required.

CONCLUSION

The Respondents respectfully submit that Judge McIff's Order should be affirmed.

DATED this 11th day of May, 1998.



COLIN R. WINCHESTER
Attorney for Respondents

CERTIFICATE OF SERVICE

I certify that on the 11th day of May, 1998, I served a true and correct signed copy of the foregoing Brief of Respondents to each person listed below:

Donald R. Johnson
c/o Utah State Prison
P.O. Box 250
Draper, Utah 84020

(via first class mail)


